



Hugh McDonald
SECRETARY OF COMMERCE

Alan McClain
COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

April 24, 2023

Certified Return Receipt No. 7020 0090 0000 1730 6009 and U.S. Mail

Mr. Brett McFadden
4842 Leesburg Dr.
Jonesboro, AR 72404

RE: In the Matter of Brett McFadden, NPN 3142220 and Farmers Insurance McFadden Agency d/b/a McFadden Agency, NPN 20327414, Respondents

Dear Mr. McFadden:

Please find the following Amended Notice of Public Hearing:

THIRD AMENDED NOTICE OF PUBLIC HEARING

You are advised that an administrative hearing will take place on **May 23rd, 2023, at 10:00 a.m.** in the Diamond Mine Room on the 2nd floor of the Department of Commerce Building, 1 Commerce Way, Little Rock, AR 72202. The hearing will be held before Insurance Commissioner Alan McClain, or his designated Hearing Officer, concerning the following matters. The Hearing is your opportunity to defend yourself against the following allegations, and against the possible revocation of your producer's license and the agency's license.

ALLEGATIONS

1. Respondent Brett McFadden ("McFadden") holds an Arkansas resident insurance producer license, National Producer Number 3142220, and is a resident of Craighead County.
2. Respondent McFadden Agency ("Agency"), also located in Craighead County, previously held a resident agency license, National Producer Number 20327414.
3. The Agency's license expired September 30, 2022.
4. Respondent McFadden was the Designated Licensed Responsible Producer for the Agency.

5. On January 9, 2022, Farmers Insurance (“Farmers”) terminated McFadden’s appointment for cause.
6. The reason for the termination of was “for using fraudulent coercive, and dishonest practices and by demonstrating incompetence, untrustworthiness, lack of good personal and business reputation, and financial irresponsibility.”
7. Farmers’ investigation revealed that the Agency “submitted altered diplomas to the Companies in support of unwarranted policy discounts. Additionally, the agency submitted falsified documents to provide proof of prior insurance for new business policies.”
8. On March 17, 2022, the Department received a complaint from another Farmers agent, Robert Byrd, after he received the book of business that previously belonged to Respondent Agency. The substance of the complaint was that the agent was concerned about some of the documentation he found in the files transferred to him.
9. In another matter before the Department, McFadden was ordered to pay two penalties. He attempted to timely do so. However, one check was incomplete because the dollar amount was missing, and the other check was returned to the Department for insufficient funds. The penalties were ultimately paid, nearly a month after they were due.
10. The Department’s investigation revealed that Respondent McFadden allowed at least one agency employee to log in with Respondent’s credentials to the Farmers dashboard.
11. The Department’s investigation additionally revealed McFadden’s willingness to allow an unappointed agent to sell insurance under his name and license number.
12. The Department’s investigation also revealed that Farmers lost at least \$1382 in premium because of affinity discounts given to consumers who were ineligible for the discounts.
13. As the agency’s Designated Licensed Responsible Producer, McFadden was ultimately responsible for the agency’s compliance with insurance laws.
14. Therefore, even if McFadden is not the individual who submitted fraudulent documents to Farmers, he is responsible for the fraudulent activity that occurred at the agency.

15. The Department's investigation further revealed that McFadden made materially false statements on applications for appointments with carriers. Specifically, on April 5, 2022, after Farmers had terminated his appointment, McFadden applied for appointments with National General and Foremost Insurance Group and Bristol West Insurance Group.

16. On both applications, when asked (on the National General application) if he had ever had an insurance producer contract or any other business relationship with an insurance carrier severed for any alleged misconduct; and (on the Foremost/Bristol West application) if he had ever had a contract or any other business relationship terminated for cause by an insurance carrier; McFadden answered "no".

17. Finally, the Department's investigation revealed that McFadden made materially false statements on a third application for appointment with a carrier. Specifically, On December 19, 2022, McFadden applied for an appointment with Sagicor Life Insurance Company. The false statements on the application are as follows:

- a. When asked whether he was currently under investigation by any legal or regulatory authority, McFadden answered "no";
- b. When asked to explain why he had ever had an insurance company terminate his appointment for a reason other than non-production, McFadden gave an explanation that essentially blamed other agency employees, even though he was the responsible producer for the agency and ultimately responsible for the agency's compliance with insurance laws and rules; and
- c. When asked whether he had ever been disciplined with fines or restrictions on his activities by any insurance department, government agency or self-regulatory authority, McFadden answered "no", even though he had had his activities restricted in 2022 by the Department with a cease and desist order and had been sanctioned with fines.

18. On February 28, 2023, McFadden submitted a renewal application for his producer license to the National Insurance Producer Registry ("NIPR"). When asked whether he had been named as a party in an administrative proceeding which had not been previously reported or whether he had had a license that had been sanctioned or

had been assessed a fine, McFadden answered “no” even though he paid a fine to resolve the cease and desist action.

19. McFadden further failed to report the cease and desist action to NIPR, as well as his involvement in this action.

20. In the renewal application, McFadden further attested that the information contained within the application was true and complete, and that he was aware that submitting false information or omitting pertinent or material information in connection with the renewal application is grounds for revocation.

APPLICABLE LAWS AND CHARGES

1. Ark. Code Ann. § 23-60-101, *et. seq.*, assigns the responsibility for administration of the Arkansas Insurance Code to the Arkansas Insurance Commissioner. The Department is the lawful agency through which the Commissioner administers the Arkansas Insurance Code, and he is authorized to bring this action for the protection of Arkansas consumers.

2. The Commissioner has jurisdiction over the parties and subject matter pursuant to Ark. Code Ann. § 23-61-103.

3. The Arkansas Producer Licensing Model Act, codified at Ark. Code Ann. § 23-64-501 *et. seq.*, governs Respondents’ insurance producer and agency licenses.

4. More specifically, Ark. Code Ann. § 23-64-506(e)(1) requires that in order to obtain or renew a producer’s license, the producer “must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.” Further, Ark. Code Ann. § 23-64-506(e)(2) provides that “qualifications for licensure under this section must continue in order to remain licensed.”

5. Ark. Code Ann. § 23-64-512(a) allows the Commissioner to “place on probation, suspend, revoke, or refuse to issue or renew an insurance producer’s license or may levy a civil penalty in accordance with § 23-64-216 or any combination of actions for any one (1) or more of the following causes: (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application; (2) violating any of the

following that calls into question the insurance producer's fitness to hold a license: (A) a law...(8) using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, lack of good personal or business reputation, or financial irresponsibility;"

6. Ark. Code Ann. § 23-64-216(a) authorizes the Commissioner to suspend or revoke any license for any one of these reasons: "(1) in the case of an insurance producer or broker licensed as an insurance producer, for any of the causes under § 23-64-512...(2)(B) violating any insurance laws or violating any regulation, subpoena, or order of the Insurance Commissioner or of another state's insurance commissioner;...(H) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere..."

7. Ark. Code Ann. § 23-64-216(c) provides "the license of a firm, limited liability company, or corporation may be suspended or revoked, or refused also for any of such causes as relate to any individual designated in the license to exercise its powers".

8. Ark. Code Ann. § 23-64-216(d)(3) authorizes the Commissioner to order restitution of actual losses to affected persons.

9. The termination of McFadden's appointment for cause, as described in Allegations 5 and 6, is in violation of Ark. Code Ann. § 23-64-512(a)(8) in that he either engaged in prohibited conduct or, as the responsible producer for the agency, was ultimately responsible for the prohibited conduct that occurred at the agency.

10. McFadden's conduct as described in Allegation 9 is in violation of Ark. Code Ann. § 23-64-512(a)(8) as writing an incomplete check and writing a check on insufficient funds demonstrates financial irresponsibility.

11. McFadden's allowing an agency employee to use his credentials to log in to the Farmers dashboard as described in Allegation 10 is in violation of Ark. Code Ann. § 23-64-512(a)(8) in that he demonstrated untrustworthiness and lack of good personal and business reputation.

12. McFadden's willingness to allow an unappointed agent to sell insurance under his name and license number as described in Allegation 11 is in violation of Ark. Code Ann. § 23-64-512(a)(8) in that he demonstrated untrustworthiness and lack of good personal and business reputation.
13. McFadden's materially false statements as described in Allegations 15 and 16 are in violation of Ark. Code Ann. § 23-64-512(a)(8) in that he demonstrated untrustworthiness and lack of good personal and business reputation.
14. McFadden's materially false statements as described in Allegation 17 are in violation of Ark. Code Ann. § 23-64-512(a)(8) in that he demonstrated untrustworthiness and lack of good personal and business reputation.
15. McFadden's false or misleading renewal application submitted to NIPR as described in Allegations 18 through 20 are in violation of Ark. Code Ann. § 23-64-512(a)(1) which prohibits producers from "providing incorrect, misleading, incomplete, or materially untrue information on the license application."
16. Respondents should be ordered to pay restitution to Farmers in the amount of \$1382.

NOTICE:

You have the right to be represented by counsel of your own choosing at this proceeding. Additionally, the Commissioner will obtain a competent reporter to record the hearing. You may avail yourself of other privileges, including the Department's assistance in issuing subpoenas to any needed witnesses or records.

Your written notification by mail, email or facsimile, that you have received this Notice of Hearing, must be received in this office within **ten (10) days of your receipt** of this notice. If your written notification is not received by the Department within ten (10) days, any and all expenses incurred by the Department in continuing the hearing or in notification of witnesses, including, but not limited to, phone calls, issuance of subpoenas and postage, will be charged to the party or parties requesting such continuance. If you or your attorney determines that a continuance is necessary, please call me at (501) 371-2820.

Sincerely,

A handwritten signature in black ink, appearing to read 'AG', with a stylized flourish extending from the bottom right.

Amanda Gibson
Managing Attorney
Arkansas Insurance Department
(501) 371-2820

cc: Mr. Bill Stanley
Stanley and Woodard Law Firm
326 S. Church St.
Jonesboro, AR 72401